

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Ninth Annual Report to Congress on State	)	PS Docket No. 09-14
Collection and Distribution of 911 and Enhanced	)	
911 Fees and Charges	)	
	)	
FCC Seeks Public Comment on Ninth Annual	)	
Report to Congress on State Collection and	)	
Distribution of 911 and Enhanced 911 Fees and	)	
Charges	)	

To: The Commission

**COMMENTS OF  
THE BOULDER REGIONAL EMERGENCY TELEPHONE SERVICE AUTHORITY**

The Boulder Regional Emergency Telephone Service Authority (“BRETSA”),<sup>1</sup> by its attorney, hereby submits its Reply Comments on the Commission’s February 7, 2018 Public Notice seeking comment on its Ninth Annual Report to Congress on State Collection and Distribution of 9-1-1 and Enhanced 9-1-1 Fees and Charges.<sup>2</sup>

**I. Comments Focus On Only Half The Equation, Not Collection and Remittance of 9-1-1 Fees by Service Providers.**

The Comments filed in response to the Notice focus on half the equation of 9-1-1 funding, the diversion of 9-1-1 fees by a few states.<sup>3</sup> The other half of the equation is the collection and remittance of 9-1-1 fees by service providers. BRETSA and other 9-1-1

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<sup>1</sup> BRETSA is a Colorado 9-1-1 Authority which establishes, collects and distributes the Colorado Emergency Telephone Surcharge to fund 9-1-1 service in Boulder County, Colorado.

<sup>2</sup> Public Notice, *FCC Seeks Public Comment on Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges*, PS Docket No. 09-14, DA 18-116 (rel. Feb. 7, 2018) (“*Notice*”); FCC, *Ninth Annual Report to Congress on State Collection and Distribution of 911 and Enhanced 911 Fees and Charges* (Dec. 29, 2017) (“*Report*”).

<sup>3</sup> While state laws may denominate fees on telephony services as fees, taxes or surcharges, BRETSA will collectively refer herein to amounts providers are required to collect and remit to state or local authorities to fund 9-1-1 service (including E9-1-1, NG9-1-1 and ENS services) as “fees.”

Authorities in Colorado are seeing decreases in remittance of 9-1-1 surcharges, but are unable to determine the reason, even in jurisdictions with ongoing population growth. The Commission can adopt regulations and/or develop information which will (i) make auditing of 9-1-1 fee remittances feasible for local and state authorities, (ii) identify whether there is under-remittance of 9-1-1 fees on prepaid service, and (iii) address application of 9-1-1 fee requirements to evolving technologies and markets.

## **II. Auditing of Providers By Local Authorities, and Perhaps States, Is Not Cost Effective.**

The Colorado statutes authorize governing bodies to impose an emergency telephone charge on telephone services in those portions of their jurisdictions in which Emergency Telephone Service (9-1-1 dialing for emergency assistance) is provided. *See* C.R.S. 29-11-102. The Colorado statutes also authorizes governing bodies to, at their own expense, audit a service supplier's books and records regarding the collection and remittance of the 9-1-1 fee. C.R.S. 29-11-103(3)(b). The successor in interest to the Bell Operating Company which once served almost all of the households and businesses in Boulder County and Colorado; now reports that it provides basic telephone service to fewer than 25% of the homes its facilities pass. Residents of Colorado now subscribe to wireless telephone services, VoIP telephone services provided by broadband providers or over-the-top providers, in addition to or instead of traditional wireline services. BRETSA is even aware of Colorado residents who subscribe to data-only plans from wireless providers for use with over-the-top VoIP services (with respect to which BRETSA is yet uncertain whether the wireless provider or the VoIP provider is responsible for routing and transporting 9-1-1 calls to the appropriate SSP, and collection and remittance of 9-1-1 fees).

The Colorado PUC having approved BRETSA's establishment of a \$0.75 9-1-1 fee in its jurisdiction, BRETSA does not considered it economically feasible to audit service providers for

proper collection and remittance of 9-1-1 fees, particularly now that there are multiple providers amongst whom telephone subscribers are divided. There would have to be significant under-collection and under-remittance of 9-1-1 fees to even meet the costs of the audit. Indeed, a larger 9-1-1 Authority in Colorado recently audited a service provider, and has advised that the audit was not cost-effective.

Service providers and their tax departments or tax partners have the data regarding their customers and the 9-1-1 fees they collect each month and remit at the state or local level (just as these same tax departments or tax partners also have data regarding the taxes on telephone service they collect and remit to state and local jurisdictions). A Commission's requirement that these service providers report to the Commission on the 9-1-1 fees and taxes remitted to each jurisdiction in which they provide service, and the number of customers they have in each jurisdiction, would be much more effective and cost effective in assuring remittance of 9-1-1 fees through individual jurisdictions auditing the providers. It would also provide data which state or local authorities could access for audit purposes, subject to additional protections for competitive market data which service providers naturally consider highly sensitive.<sup>4</sup>

### **III. Auditing of *Prepaid* 9-1-1 Fees On a State or Local Level Is Not Cost-Effective.**

Like many states, Colorado imposes 9-1-1 fees on *prepaid* wireless service. These fees are collected at the point-of-sale, remitted to the Colorado Department of Revenue, and distributed to the 9-1-1 Authorities based on the distribution of wireless 9-1-1 calls among the 9-1-1 Authorities' jurisdictions.

The Colorado Department of Revenue audits for collection and remittance of 9-1-1 fees on prepaid service, when it audits a retailer for collection and remittance of sales tax, due to the

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<sup>4</sup> Service providers have expressed concern with the adequacy of state open records acts to protect against disclosure of outage reports which may include competitively sensitive information, but not FCC FOIA requirements. Data could be released to state and local authorities subject to adequate non-disclosure provisions.

cost of conducting audits. A small percentage of retailers of prepaid minutes are believed to be audited each year.

Like many states which have implemented 9-1-1 fees on prepaid wireless service, BRETSA believes the surcharges are grossly under-recovered based upon analysis of the Colorado Public Utilities Commission staff. Upon implementation of 9-1-1 fees on prepaid wireless service in Colorado in 2011, the 9-1-1 fees remitted to the Department of Revenue for prepaid service were approximately one-half the amount projected based on estimates of use of prepaid wireless service in the state at that time. While national statistics for prepaid service show a dramatic increase in use of and revenues from prepaid wireless service since 2011, the 9-1-1 fees on prepaid wireless service remitted in Colorado are now about one-fourth the fees which should be remitted based upon an extrapolation of national use and revenue statistics.<sup>5</sup>

The collection of surcharges at the point of sale makes auditing the collection and remittance of the fees even less cost-effective than auditing service providers for remittance of 9-1-1 fees on post-paid services. Rather than auditing perhaps tens of prepaid providers supplying service in Colorado; hundreds or thousands of independent retailers located in Colorado and on the Internet who sell additional prepaid minutes, as well as the prepaid service providers themselves, would have to be audited to determine if and where the under-remittance was occurring. Licensed, facilities-based providers have stated that they cannot even provide information of the number of minutes of use being sold in any particular state, or identify the retailers to which the minutes are distributed, due to their use of distributors, who in-turn use sub-distributors, to get their cards to reload minutes of use into as many retail outlets as possible.

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<sup>5</sup> BRETSA's belief that 9-1-1 fees on prepaid service are based upon the Colorado PUC's extrapolation from use and revenue statistics available at a national level, rather than upon a comparison with revenues from post-paid service which some stakeholders have cited.

Because neither prepaid providers nor any industry association is known to release call volume data on other than a national basis, individual states are unable to demonstrate that they are not receiving appropriate remittances of the 9-1-1 fees. Prepaid wireless providers dispute that there is *any* under-remittance of 9-1-1 fees on prepaid wireless service, and the 9-1-1 community is unable to produce evidence that under-remittance is occurring, other than state-after-state determining that it is not receiving the remittances expected based upon extrapolations of national sales and traffic volume data.

The Commission's collection (i) from states of 9-1-1 fee remittance on prepaid service, and (ii) from prepaid service providers of usage and revenue data would at least permit of whether there is significant under-remittance of 9-1-1 fees on prepaid service. The issue could then be dismissed, or if evidence of under-remittance was found further measures could be identified to address the issue.

#### **IV. Additional Issues With 9-1-1 Fees Can Best Be Resolved By The Commission.**

There are additional issues regarding collection and remittance of 9-1-1 fees which are unresolved. These include (i) calculation of 9-1-1 fees as Multi-Line Telephone Systems evolve from analog PBXs to digital broadband Enterprise Communications Systems, (ii) application of 9-1-1 fees to over-the-top VoIP services, and (iii) preventing avoidance of 9-1-1 fees providing competitive advantages to providers of some services.

##### **A. Evolving Enterprise Communications Services.**

PSAPs in Colorado, including BRETSA, are seeing decreases in total 9-1-1 fee remittances, for which they are unable to determine the cause. BRETSA understands that in the past, PBXs were served by trunks. A surcharge was collected and remitted for each line derived from the trunks subscribed to the PBX. Thus, 24 9-1-1 fees would typically be due per trunk connected to a PBX. Subsequently, many PBXs came to be served by PRI connections, for

which fewer 9-1-1 fees *may* have been collected and remitted by service providers per connection relative to the number of “lines” provided.

Today, IP Enterprise Communications Systems (“IP-PBXs”) may be connected to a fiber or other broadband facility from which a much greater number of voice channels may be derived. Complicating the matter is that IP-PBXs may also handle non-voice data connections or sessions. Indeed, BRETSA understands that the number of voice or other data channels derived from the broadband connection may be dynamic, and may change moment-to-moment. The service provider may not know the amount of bandwidth used for voice and data, respectively, even if static.

BRETSA has inquired of regulators and provider-representatives alike as to how providers determine the number of 9-1-1 fees to collect on a broadband connection into an IP-PBX. Not only have neither the regulators or provider-representatives been able to provide an answer, but BRETSA has received inquiries from a broadband provider as to how it is to calculate the 9-1-1 fees it is to remit to BRETSA!

There must be consistency among how competing providers are calculating, collecting and remitting 9-1-1 surcharges on broadband connections to IP-PBXs. The uncertainty as to the capability of broadband providers to determine use of their facilities connected to IP-PBXs, how they are calculating 9-1-1 fees, and how they could calculate 9-1-1 fees, can lead to inconsistent remittance of 9-1-1 fees and free-rider problems. The Commission can assist local and state authorities, and providers through proceedings designed to develop such information.

#### **B. VoIP and Over-the-Top Providers.**

BRETSA is uncertain it even knows which VoIP providers are supplying service in its jurisdiction, let alone whether they are collecting and remitting 9-1-1 fees. BRETSA believes

facilities-based VoIP providers such as LECs and cable companies providing broadband service, and including VoIP as a service option, likely are reliably collecting and remitting surcharges. They have facilities in BRETSA's jurisdiction. However, it has no way of knowing which over-the-top VoIP providers whose traffic is transmitted over the fiber and lines of the facilities-based broadband providers even have customers in its jurisdiction unless they remit 9-1-1 fees.

BRETSA is aware that some over-the-top VoIP providers have their customers purchase data-only plans from facilities-based wireless providers, which the VoIP providers use to provision over-the-top VoIP service. BRETSA does not know if (i) such over-the-top providers have customers in its jurisdiction, (ii) the wireless provider or VoIP provider is responsible for routing 9-1-1 calls, and (iii) whether either the wireless provider or over-the-top VoIP provider collect and remit 9-1-1 fees.

It is because of these types of uses that BRETSA proposed through its representative on TFOPA Working Group 3 that a shift be made from service-based 9-1-1 fees to connection-based 9-1-1 fees. Facilities-based providers over whose facilities their own voice, text, and other services would be transmitted, and over-the-top providers' services would also be transmitted, would pay a fee. Facilities-based providers supplying broadband connections over which voice and other services would be provisioned would be on an equal playing field as they would collect and remit a 9-1-1 fee per LEC access line, wireless number, and residential broadband service.

Neither facilities-based nor over-the-top providers would pay 9-1-1 fees on the voice, text or other services they provision over the broadband connections. It would thus provide a more competitively neutral environment for the service providers as well (some of whom may have no billing arrangement with users of their service). The alternative of imposition of 9-1-1 fees on over-the-top providers faces challenges in enforcement due to the difficulty even identifying

providers supplying service in a jurisdiction, the fact that some providers may have no billing relationship with customers, and the fact that a provider may have no facilities in a jurisdiction and limited connections with a jurisdiction increasing costs of collecting unremitted 9-1-1 fees.

The complicating factor comes with the provision of service to commercial and institutional customers, which may contract for much larger bandwidths supporting large numbers of concurrent voice sessions, for example. This might require a bandwidth-sensitive fee element. However the universe of such commercial broadband customers may be small enough to make practicable rules for application of 9-1-1 fees which require information regarding the nature of use to be provided by the customer.

The Commission is uniquely capable of identifying the manner in which broadband services are used by different classes of customers, the manner in which 9-1-1 fees are being calculated across providers and across jurisdictions, and of assisting states in developing practicable solutions for fairly assessing 9-1-1 fees both from a competitive standpoint for providers and from the standpoint of end users paying the fees. The Commission's capability in this regard far outweighs that of 9-1-1 Authorities whose primary mission is to process 9-1-1 calls and provide emergency response.

## **V. Conclusion.**

The Commission is in a far better position than individual 9-1-1 Authorities or states to audit provider's collection remittance of 911 fees, or require filing of data which can be accessed by 9-1-1 Authorities and states under FCC non-disclosure provisions for audit purposes.

The Commission is also in a far better position than 9-1-1 Authorities or states to audit collection and remittance of 9-1-1 fees on prepaid service on a national scale, the scale on which industry reports its levels of usage and revenues. This will enable the determination whether or not there is under-collection and under-remittance of such fees.

The Commission is in a far better position than 9-1-1 Authorities or states to assess whether 9-1-1 fees are being fairly and consistently collected on broadband connections into IP PBXs, over-the-top services, and whether changes in 9-1-1 fee assessments are appropriate.

With the information necessary to resolve these issues, the Commission will also be able to provide the “other half of the equation,” the funding of 9-1-1 services through 9-1-1 fees, as well as any diversion of those fees.<sup>6</sup> Public policy planning including funding requirements for deployment of NG9-1-1 would benefit from information regarding the revenues to 9-1-1 authorities generated by 9-1-1 fees as well as diversion of those fees by some states.<sup>7</sup>

Respectfully submitted,

**BOULDER REGIONAL EMERGENCY  
TELEPHONE SERVICE AUTHORITY**

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<sup>6</sup> This will not provide a complete picture of 9-1-1 funding. In BRETSA’s case, less than one-third of the funds required to equip and operate the PSAPs it supports come from 9-1-1 fees; but those fees are essential.

<sup>7</sup> Colorado does not divert 9-1-1 fees. However with respect to those states which do “divert” funds; a different picture would be presented if amount of the 9-1-1 fees “diverted” is equal-to or less-than their annual appropriations for 9-1-1.